[Docket No. 23]

## UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

VICTOR MOORE,

Civil Action 06-4516 (RMB)

Plaintiff,

:

:

v.

MEMORANDUM AND ORDER

CUMBERLAND COUNTY

BOARD OF FREEHOLDERS, et al.,

Defendants.

Delendants.

This matter comes before the Court upon the Plaintiff Victor Moore's letter dated February 23, 2008 [Docket No. 23]. On February 22, 2008, this Court issued an Order in this matter granting summary judgment in favor of Defendant Sgt. Falconire pursuant to Federal Rule of Civil Procedure 56. The Court further Ordered the Plaintiff to show cause, by affidavit, setting forth what good faith efforts to prosecute this action had been made and what further efforts were intended in light of the fact that the case had been pending for more than 120 days without any proceedings having been taken against Defendants Charleston, Morales, and McCado. In response to the Court's Order, the Plaintiff sent a "missive . . . to express to the court the basis for [his] earnest request for a continuance" in this matter. [Docket No. 23].

In his submission, the Plaintiff states that he has been seriously hindered by the medical department of the correctional facility in which he is presently confined, Southern State Correctional Facility. He states that he is unable to obtain medical records that serve as proof of the extent of the injuries he has allegedly sustained.

Plaintiff, however, does not set forth, by affidavit, how the request to obtain these medical records demonstrates efforts to prosecute the action against the remaining Defendants. See Local Rule 41.1(a) of the Local Rules of the Court. As the Plaintiff states, he is seeking these documents as "rebuttal against the motion filed by the defendants." This Court finds that medical proof of his injuries does not defeat summary judgment. Proof by the Plaintiff of his sustained injuries does not address the elements of his claim as set forth in the Court's prior Order.

The Court notes, however, that the Plaintiff has set forth in his submission that he is in the process of "pursuing the assistance of private legal counsel." He requests a continuance of this matter, but does not request a certain period of time. The Court finds that given the inactivity in this case as to the remaining Defendants, the interests of justice would be better served by dismissing this case without prejudice, and allowing Plaintiff to reinstate the case in the event Plaintiff retains

counsel. Unless the Court hears from the Plaintiff to the contrary by March 14, 2008, the Complaint will be dismissed without prejudice as to Defendants Charleston, Morales, and McCado.

<u>s/Renée Marie Bumb</u> RENÉE MARIE BUMB United States District Judge

Dated: <u>March 7, 2008</u>